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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,845	03/12/2004	Klaus Lidolt	03100199AA	5020

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EXAMINER	
JACKSON, BRANDON LEE	

ART UNIT	PAPER NUMBER
3772	

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/798,845	LIDOLT ET AL.	
	Examiner	Art Unit	
	Brandon Jackson	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 July 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *04/22/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement filed 03/12/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
    (1) Field of the Invention.
    (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Objections

Claim 12 is objected to because of the following informalities: "an actuating signal" in line 1 should be "the actuating signal." Appropriate correction is required.

Claims 15 are objected to because of the following informalities: "signal" is unclear because could refer to signal from signaling arrangement or signal from command transmission. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 1 recites the limitation "the signaling arrangement" in line 4-5. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the locking state" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the detection arrangement" in 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the position" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the joint" in lines 2, 4, 6-7. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the command signal" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the signaling arrangement" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

Claim 1-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (EP 0 141 640 A1). Brown discloses an orthopedic aid (fig. 1) with a locking device for locking and unlocking two movable parts in predetermined relative positions (page 2, line 10-12). A signaling arrangement (46) that emits a visual signal or warning for the locking state or upon unlocking of the locking device (page 4, lines 29-34). A detection arrangement (47) detects the locking state of the two parts works with the signal arrangement (46) to emit a signal indicating the locking state. A visual signal is also emitted upon unlocking of the device (page 4, lines 29-34). The locking device is designed to generate an electrical signal as a function of the locking state (page 4, lines 27-29). The locking device has a movable plunger (18) and socket (34) whose position can be detected (page 2, lines 17-23) by the detection arrangement (47). The plunger and socket configuration is functionally equivalent to locking pin recited in claim 6 of the application. The plunger and socket configuration if fully capable of having a moving piece that can lock and unlock the joint, as well as be detected by a detection arrangement. The plunger (18) is actuated electromechanically by the moving element

(41) connected to the cable (25). The detection arrangement (47) is designed for electrical scanning of the position (page 4, lines 27-34) of the plunger (18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8 and11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (EP 0 141 640 A1) in view of Stark et al. (U.S. Patent 6,184,797). Brown substantially disclosesthe invention as claimed, see rejection of claims 1 and 6 above, however Brown fails to disclose a magnet coil to permit unlocking for the device. Further, Brown fails to disclose a wireless transmission of an actuating command signal from a walking aid wherein, the command signal can be triggered by the handgrip on the walking aid. The signal of the signaling arrangement can be transmitted wirelessly to the walking aid. The handgrip of the walking aid has a vibrator that can be actuated by the signal. However, Stark teaches a magnet coil (45a) to unlock the locking portion

of the device (col. 20, lines 33-49). Moreover, Stark teaches a wireless transmission of an actuating signal (col. 4, lines 50-61). The signal of the signaling arrangement can be sent wirelessly to a walking aid (col. 4, lines 2-9). The term "walking aid" has been given its broadest, most reasonable interpretation, which is any device that can assist in the walking of a person. With respect to Stark, a communication center where doctors receive information from the orthopedic brace in order to analyze and return actuating signals to the brace for improved brace efficiency is assistance in the walking of the user. Stark teaches a wireless transmission can be triggered by a handgrip of a walking aid, which Applicant has defined in the specification as a button, and Stark defines as a keypad (74). The walking aid has a visual and/or acoustic signal display arrangement (78). The walking aid is provided with an electromechanical vibrator (77) that can be actuated by a signal originating from the signaling arrangement (60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the brace and signaling arrangement of Brown with the transmission device and walking aid as taught by Stark because Stark's transmission device was made to be used in conjunction with a orthopedic brace to collect data about the position of the brace, as well as send signals and receive actuating signals in order to better performance of the brace.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (EP 0 141 640 A1) in view of Naft et al. (U.S. Patent Application Publication 2002/0183673). Brown substantially discloses the invention as claimed, see rejection of claim 1 above, however Brown fails to disclose an electromagnetic actuating

arrangement with a low actuating force of not more than 2N; the locking mechanism cannot be unlocked by the actuating arrangement on account of frictional forces. However, Naft teaches an electromagnetic arrangement that operates at with relatively low electromagnetic attraction forces (paragraph 0050, lines 1-5). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the joint of Brown with that taught by Naft in order to allow the joint to operate with low power consumption from the battery.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-7, 11-12, and 14-15 are provisionally rejected on the ground of nonstatutory double patenting over claim1-7 of copending Application No. 2005/0039762. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: An orthopedic device with two parts (15, 16) which are made movable relative to one another and with a locking device for locking the two parts (15, 16) in a predetermined relative position and for unlocking the parts (15, 16) in order to permit movement of the parts (15, 16) with respect to one another, wherein the actuating device can be actuated electromechanically from a control module (8, 8') and an actuating signal can be sent by wireless transmission from an actuating unit (9', 14) to the control module. The actuating unit (9', 14) of the orthopedic aid is integrated into a walking aid (10). Wherein, the actuating unit (9', 14) is accommodated in a handgrip (12) of the walking aid (10). The actuating button (9') is arranged in the free end face of the handgrip (12). The actuating unit (9', 14) is formed by a manual transmitter, which can be fitted into a walking aid (10). An acknowledgement signal or warning signal can be transmitted from the control module (8, 8') to the actuating unit (9', 14). The actuating unit (9', 14) has a visual and/or acoustic signal display arrangement and/or a vibrator that can be controlled by the acknowledgement signal or a warning signal. The vibrator is arranged in a handgrip (12) of the walking aid (10).

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dufree et al. (U.S. Patent 5,476,441), Irby et al. (U.S. Patent 6,500,138), Scorvo (U.S. Patent Application Publication 2003/0212536), Nijenbanning et al. (U.S. Patent 6,979,304), Clausen et al. (U.S. Patent Patent Application Publication 2006/0224246).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon Jackson
Examiner
Art Unit 3772

BJ

11/27/06